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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,437	12/06/2001	F. Murphy Sprinkel JR.	033018-070	7405
7590	08/23/2004		EXAMINER	EREZO, DARWIN P
Peter K. Skiff BURNS, DOANE, SWECKER & MATHIS, L.L.P. P.O. Box 1404 Alexandria, VA 22313-1404			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/003,437	SPRINKEL ET AL.	
	Examiner Darwin P. Erezo	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 May 2004.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 18-21 and 23-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 26-31 is/are allowed.
- 6) Claim(s) 18-21,23-25 and 32-37 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 18, 21, 25 and 32-37 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,665,262 to Hajaligol et al.
3. As to claims 18, 21, Hajaligol teaches a method of manufacturing a vaporizing device comprising the steps of providing a fluid passage in a body (see Fig. 10), the fluid passage having an inlet opening and an outlet opening; and forming a tubular heater (the device shown in Fig. 10) by depositing a thin resistive film (col. 19, lines 41-46) inside the fluid passage such that the film lines part of the length of the passage; the heater being operable to volatilize fluid in the passage by passing an electrical current through the film (via electrical leads **104a** and **104b**; wherein the depositing step comprises coating the interior with a layer of metal powder (col. 13, line 59).
4. As to claim 25, Hajaligol teaches a method of manufacturing a vaporizing device.
5. As to claim 32, Fig. 10 of Hajaligol discloses the device made by the method of claim 26. Since the claim is directed towards a device claim, the specific depositing steps of the method is irrelevant since patentable weight is given to the final product and not the method of making the product.

6. As to claims 33 and 35, Hajaligol discloses the use of platinum (col. 14, line 9).
7. As to claim 34, Hajaligol discloses the fluid passage located in a multilayer body (see Fig. 10).
8. As to claim 36, Hajaligol discloses a bio-compatible heater.
9. As to claim 37, Hajaligol discloses a device having several layers enclosing a channel therebetween (see Fig. 10).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 19, 20 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,665,262 to Hajaligol et al. to US 5,519,191 to Ketcham et al.

12. As to claim 19, 20 and 24, Hajaligol teaches a depositing step consisting of plasma coating but is silent comprising introducing a metal in dispersion in the flow passage and using platinum salt during the depositing step. Hajaligol discloses a depositing step comprising introducing a metal in dispersion (col. 6, lines 27-53) and using platinum salt during the depositing step (col. 6, lines 36-43) and coating the interior with a metal salt solution and heating the passage to a temperature sufficient to reduce the deposited material to a thin metal film (col. 7, lines 34-45). Therefore, it would have been obvious at the time the invention was made to use the depositing step

of Ketcham in the method of Hajaligol since using a specific depositing step is a matter of obvious design choice available to one of ordinary skill in the art.

***Allowable Subject Matter***

13. Claims 26-31 are allowed.

***Response to Arguments***

14. Applicant's arguments filed 5/13/04 have been fully considered but they are not persuasive.

15. In response to applicant's argument that Hajaligol fails to teach a tubular heater, it should be noted that Fig. 10 specifically teaches a tubular heater, which is viewed as a combination of tube 300 and heater blades 120. Furthermore, the heater blades 120 satisfy the claim limitation of lining "part of the length of the passage".

***Conclusion***

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erezo whose telephone number is (703) 605-0420. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, McDermott or Shaver can be reached on (703)308-0858. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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GLENN K. DAWSON  
PRIMARY EXAMINER